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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 BETHESDA SLAVIC CHURCH,

8 Plaintiff,

9 v.

10 ASSEMBLIES OF GOD LOAN FUND,
11 et al.,

12 Defendants.

CASE NO. C12-5175BHS

ORDER GRANTING
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION
AND DENYING DEFENDANTS'
MOTION TO STRIKE

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14 This matter comes before the Court on Plaintiff Bethesda Slavic Church's
15 ("Church") motion for a preliminary injunction (Dkt. 13) and Defendants Assemblies of
16 God Loan Fund ("AG Loan Fund") and Assemblies of God Financial Services Group,
17 d/b/a AG Financial Solutions' ("AG Financial Solutions") (collectively "AG
18 Defendants") motion to strike (Dkt. 22). The Court has reviewed the briefs filed in
19 support of and in opposition to the motions, heard oral argument of counsel on April 10,
20 2012, and considered the remainder of the file and hereby grants the Church's motion for
21 a preliminary injunction and denies the AG Defendants' motion to strike for the reasons
22 stated herein.

23 **I. PROCEDURAL HISTORY**

24 On February 22, 2012, the Church filed a verified complaint in the Superior Court
25 for the State of Washington in and for Clark County against the AG Defendants, Fidelity
26 National Title Insurance Company ("Fidelity"), and Does 1-20 ("Defendants"). Dkt. 1, ¶
27 1. The Church requests declaratory and injunctive relief, quiet title, and asserts five
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1 causes of action: (1) violations of the Washington Consumer Protection Act, RCW
2 Chapter 19.86 (“CPA”), (2) common law fraud, (3) aiding and abetting, (4) violations of
3 the Washington Escrow Agent Registration Act, RCW Chapter 18.44 (“EARA”), and (5)
4 slander of title. *Id.*, Exh. 1 (“Complaint”).

5 The Church also filed an ex parte motion for temporary restraining order to enjoin
6 a Trustee’s Sale that was scheduled for February 24, 2012. Dkt. 1-1 at 53. The Church
7 asserts that the state court granted the temporary restraining order. Dkt. 12.

8 On February 29, 2012, the AG Defendants removed the matter to this Court. Dkt.
9 1.

10 On March 12, 2012, the Church filed an emergency motion for continued
11 enforcement of the temporary restraining order and for a preliminary injunction. Dkt. 13.
12 On March 13, 2012, the Court set a hearing for the emergency motion. Dkt. 12. On
13 March 14, counsel for the Church informed the Court that the emergency motion was
14 withdrawn. Dkt. 16. The Court struck the hearing, noted the preliminary injunction for
15 consideration on the Court’s April 6, 2012 calendar, and set the preliminary injunction for
16 hearing on April 10, 2012. On April 2, 2012, the AG Defendants and Fidelity responded.
17 Dkts. 22 & 23. The AG Defendants included a motion to strike in their response. Dkt. 22
18 at 11–12. The Church did not reply.

20 II. FACTUAL BACKGROUND

21 The Church is a non-profit corporation registered in the state of Washington.
22 Complaint, ¶ 12. Defendant AG Loan Fund is a non-profit Section 501(C)(3) company
23 that provides loans in connection with church-related projects. Dkt. 25, Declaration of
24 Joshua Bartlotti (“Bartlotti Decl.”), ¶ 3. AG Loan Fund has approximately \$1.1 billion in
25 assets, much of which represents the retirement savings of various ministers and
26 missionaries at certain Assemblies of God churches. *Id.*, ¶ 4. Defendant Assemblies of
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1 God Financial Services Group (“AG Financial Services”) is a 501(C)(3) company which
2 manages loans of AG Loan Funds pursuant to a management agreement. *Id.*, ¶ 6.

3 On January 28, 2008, the Church executed an Adjustable Rate Secured Note in the
4 principal amount of \$4,002,000 (“Note”) and a Deed to Trust, Assignment of Leases and
5 Rents and Security Agreement (“Deed of Trust”) with respect to a certain property at
6 11910 154th Street in Brush Prairie, Washington (the “Property”). Dkt. 29, Declaration
7 of Tammy Parnell (“Parnell Decl.”), ¶ 7. The Deed of Trust gave AG Loan Fund the
8 right to foreclose if the Church defaulted on the 2008 Note. Complaint, Ex. B. AG Loan
9 Fund caused the Deed of Trust to be recorded in Clark County, Washington. Bartlotti
10 Decl., ¶ 11. The 2008 Note was a refinance of the Church’s earlier note in 2006 with AG
11 Loan Fund. *Id.*, ¶ 10. The proceeds of the 2006 note were used by the Church to build a
12 church on the Property. *Id.* The Church obtained the 2008 Note to pay for cost overruns
13 that arose during the construction process. *Id.*, ¶ 11. AG Loan Fund made a series of
14 advances on the 2008 Note over the following two years as construction was completed.
15 *Id.*, ¶ 11.

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17 The 2008 Note was funded with assets of AG Loan Fund, and the Note has never
18 been assigned. *Id.*, ¶ 14. AG Loan Fund is, and has always been, the entity that is owed
19 all amounts due under the 2008 Note and is and has always been the possessor, owner,
20 and holder of the 2008 Note. Parnell Decl., ¶ 7. AG Loan Fund has always had the
21 ability to satisfy and cancel the 2008 Note if the 2008 Note were paid in full. Bartlotti
22 Decl., ¶ 15. AG Loan Fund has never received any payment on the 2008 Note from any
23 party other than the Church. Parnell Decl., ¶ 10. After the 2008 Note was issued, it was
24 modified several times when the Church and AG Loan Fund entered into three Allonges
25 which became part of the 2008 Note. Bartlotti Decl., ¶ 13, Ex. 4.

26 After the 2008 Note was funded, the Church made multiple payments to AG Loan
27 Fund. *Id.*, ¶ 17. The Church then made a series of incomplete payments and failed to
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1 make other payments due under the 2008 Note. Parnell Decl., ¶ 11. As a result, on or
2 about July 1, 2011, a Notice of Default was issued to the Church. *Id.* On or about
3 September 14, 2011, foreclosure proceedings began. *Id.* The foreclosure sale was
4 continued several times and is now set for April 13, 2012. *Id.*

5 **III. DISCUSSION**

6 **A. Motion to Strike**

7 AG Defendants move to strike the Church’s verified complaint and the Declaration
8 of Victor Mikityuk (Dkt. 14) because (1) neither document is submitted under penalty of
9 perjury and (2) the documents are not based on personal knowledge and contain hearsay.
10 Dkt. 22 at 11–12. First, both documents contain a statement that they are submitted under
11 penalty of perjury. *See* Dkt. 1-1 at 18, line 14, & Dkt. 14, ¶ 1. Second, the Court will set
12 forth the evidence it relies upon in issuing this order and declines to decide each
13 evidentiary objection. Therefore, the Court denies the AG Defendants’ motion to strike.
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15 **B. Preliminary Injunction**

16 In enacting the DTA, the Washington legislature sought to promote three primary
17 goals: “(1) that the nonjudicial foreclosure process should be efficient and inexpensive;
18 (2) that the process should result in interested parties having an adequate opportunity to
19 prevent wrongful foreclosure; and (3) that the process should promote stability of land
20 titles.” *Plein v. Lackey*, 149 Wn.2d 214, 225 (2003). The DTA must be construed in
21 favor of borrowers because of the relative ease with which lenders can forfeit borrowers’
22 interests and the lack of judicial oversight in conducting nonjudicial foreclosure sales.
23 *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915–16 (2007).

24 The DTA permits the borrower or grantor, among others, to restrain a trustee’s sale
25 by court action “on any proper legal or equitable ground.” RCW 61.24.130(1). The DTA
26 does not define what constitutes proper grounds for restraint. If the Court grants an
27 injunction, the Court shall require “the applicant pay to the clerk of the court the sums
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1 that would be due on the obligation secured by the deed of trust if the deed of trust was
2 not being foreclosed” RCW 61.24.130(1). “In the case of default in making the
3 periodic payment of principal, interest, and reserves, such sums shall be the periodic
4 payment of principal, interest, and reserves paid to the clerk of the court every thirty
5 days.” RCW 61.24.130(1)(a). Moreover, the DTA allows a court to “condition granting
6 the restraining order or injunction upon the giving of security by the applicant, in such
7 form and amount as the court deems proper” RCW 61.24.130(1)(b).

8 In this case, the Church has persuaded the Court that, at the very least, defendants
9 have not complied with RCW 61.24.130(3) after the temporary restraining order issued in
10 state court dissolved. Moreover, the Church has also alleged and defendants have not
11 offered competent contrary evidence that the defendants properly postpone the trustee’s
12 sale pursuant to the Deed of Trust based on the original notice of default and/or notice of
13 trustee’s sale. *See* Deed of Trust § 3.3. Construing the statutory requirements in favor of
14 the Church, as the Court must do, the Court finds that a proper legal ground to enjoin the
15 sale is to ensure that defendants comply with the statutory process of the DTA. It should
16 be noted that the Court is not currently persuaded that the foreclosure can be prevented
17 based on the merits of the Church’s claims; the Church has only persuaded the Court that
18 the current trustee’s sale should be enjoined and reset so that the defendants may strictly
19 comply with the provisions of the DTA.

21 With regard to the posting of security in this matter, the AG Defendants contend
22 that the Court should require the Church to post security in the total amount of missed
23 principal, interest, and late payments, which is \$534,834.73 as of April 10, 2012. Dkt. 22
24 at 6. The DTA, however, only requires the “periodic payment of principal, interest, and
25 reserves” paid every 30 days. The AG Defendants state that this amount would be
26 \$35,251.08 per month. Parnell Decl., ¶ 11. Therefore, the Court requires the Church to
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1 pay this amount to the clerk of the Court every 30 days beginning on Thursday April 12,
2 2012 at 4:30PM.

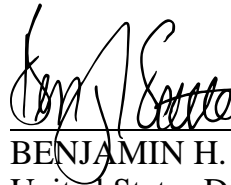
3 **C. Dissolution**

4 This order shall automatically dissolve if the Church fails to make its first payment
5 on Thursday, April 12, 2012, by 4:30PM or any payment thereafter. If payments are
6 properly made, any defendant may file a motion to dissolve this injunction. While not
7 necessary, it would be helpful to the Court to submit a plan to conduct a new trustee's
8 sale that complies with 64.24.130(3)(a) & (b).

9 **IV. ORDER**

10 Therefore, it is hereby **ORDERED** that the AG Defendants' motion to strike (Dkt.
11 22) is **DENIED** and the Church's motion for a preliminary injunction (Dkt. 13) is
12 **GRANTED**.

13 DATED this 10th day of April, 2012.

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17 BENJAMIN H. SETTLE
18 United States District Judge
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